

U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises



Final Statement

Specific Instance between the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and PepsiCo, Inc.

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I. Introduction

This Final Statement concludes consideration by the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises (Guidelines) of the Specific Instance submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) regarding the actions of PepsiCo Inc., through its subsidiary in India (PepsiCo India). A review of this Specific Instance and consideration of further discussion with both parties resulted in an offer of mediation with reference to Chapter II (A) (8) of the Guidelines. PepsiCo declined this offer; therefore, the review of this Specific Instance is concluded as conditions are not satisfactory to proceed to mediation.

II. Context and Background on the U.S. NCP

The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to a) encouraging their MNEs to follow the Guidelines in their global operations and b) appointing a National Contact Point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP receives concerns raised, in the form of a Specific Instance, about the business conduct of an MNE operating in or from the United States. It handles such issues in accordance with procedures it has adopted for this purpose, which are available on this public website:

<http://www.state.gov/e/eb/oecd/usncp/links/rls/index.htm>. In such circumstances, the NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to matters raised under the Guidelines. The NCP's role is to take up issues that are amenable to a consensual resolution under the Guidelines and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. The U.S. NCP does not make a determination whether a "violation" of

the Guidelines has occurred, nor does the NCP have legal authority to adjudicate disputes submitted under this process.

III. Initial Assessment

The process leading up to completing the Specific Instance includes the Initial Assessment, which determines whether the issues raised merit further examination. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines. Per the OECD Guideline procedures, the Initial Assessment is made based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

IV. The Specific Instance

IUF's Submission

On November 18, 2013, the Office of the U.S. NCP received Specific Instance from the IUF, based in Geneva, Switzerland. The substance of the IUF complaint alleged that between January 5 and April 30, 2013, 162 workers of 170 employed at three West Bengal warehouses contracted exclusively by PepsiCo were dismissed or compelled to resign solely as a consequence of exercising their right to join a union. IUF stated that PepsiCo, through its subsidiary in India, contracts these workers through Radhakrishna Food Land Pvt. Ltd. (RKFL), and in this capacity has facilitated workers' rights abuses through this subcontracting relationship.

According to the Specific Instance, the IUF cites PepsiCo in breach of specific elements under Chapter V of the Guidelines, including a failure to:

- Respect the right of workers employed by the multinational enterprise to establish or join trade unions of their own choosing.

IUF – PepsiCo, Inc.

- Respect the right of workers employed by the multinational enterprise to have trade unions of their own choosing recognized for the purpose of collective bargaining and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.
- Provide information to workers' representatives for meaningful negotiations on conditions of employment.
- Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
- Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.
- Provide reasonable notice of such changes to representatives of the workers in their employment and their organizations, and, where appropriate, to the relevant governmental authorities, and cooperate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects.

The IUF alleges that these violations of Articles 1a) and b), 2 b) and c), 3 and 6 of the Guidelines Chapter 4: Employment and Industrial Relations, constituted violations of Chapter IV: Human Rights, specifically the requirement that “Enterprises should, within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

4. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
5. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”

According to the IUF, PepsiCo has failed to perform the required human rights due diligence and therefore tacitly allows these violations to persist.

To support its claim, the IUF contends that a group of workers who were rehired In May 2013 were allowed to return to work but under conditions that violate their human rights.

IUF believes that PepsiCo should ensure reemployment and back pay for the workers who were terminated by RKFL under conditions which guarantee they can effectively access their right to form or join a trade union.

PepsiCo’ Response

PepsiCo emphasized that the IUF’s complaint focuses on the alleged actions of its contractor, and not PepsiCo or its subsidiary. In addition, PepsiCo stated that regardless of whether or not the IUF’s complaint against the contractor had merit, PepsiCo has neither the ability nor the obligation under the Guidelines to require reemployment of the dismissed workers employed by RKFL. PepsiCo maintains that the strike that led to the termination of the workers was illegal, as the strikers did not provide the required notice under Indian law. Regardless, PepsiCo stated that it did in fact use its relationship with RKFL to secure offers of reemployment to 28 of the workers that the IUF claims were specific victims of human rights violations.

PepsiCo claims that the ultimate reason for the IUF complaint rests not on the alleged violations of the Guidelines in its relationship with RKFL; rather it stems from PepsiCo’s refusal to enter into a formal global “relationship” with the IUF. The IUF has been successful in entering into these agreements with other corporations. PepsiCo also noted that prior to the submission of the Specific Instance, the IUF publicized the complaint through social media and engaged in intentional “spamming” of PepsiCo executives through an auto-email system, thus harassing its employees and exhibiting bad faith with regard to the confidentiality

of the NCP process. Lastly, PepsiCo notes that it did investigate all of the IUF's allegations, through multiple avenues and discussions with IUF, including third-party review, and could find no evidence to support the IUF's claims. Because it had already engaged in multiple discussions with the IUF and investigated their claims, PepsiCo declined the NCP's offer of mediation.

V. Decision and Conclusion

The U.S. NCP does not make judgments as to whether parties have or have not violated the Guidelines. Nonetheless, the issues raised by IUF appear to merit some consideration, despite evidence PepsiCo has provided noting its efforts to adhere to and promote the Guidelines. For that reason, the U.S. NCP made a decision to accept the IUF submission as containing legitimate questions and, according to Chapter II (A) (8) of the Guidelines offer its good offices for mediation.

The applicable language of that section of the Guidelines states enterprises should “[p]romote awareness of and compliance by workers employed by multinational enterprises with respect to company policies through appropriate dissemination of these policies, including through training programs. The U.S NCP offered its good offices for mediation based on this precept with the view that it might further dialogue between RKFL and its employees, supported by the IUF and PepsiCo. On March 14, 2014, PepsiCo responded that it had already engaged in discussions directly with the IUF; because of the inability to reach agreement on the above-referenced issues, PepsiCo declined the U.S. NCP's offer of mediation. This therefore concludes the U.S. NCP's role in this Specific Instance.

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